SUMMARY OF ANTITRUST DIVISION

HEALTH CARE CASES

(Since August 25, 1983)

I. CIVIL CASES AND MATTERS

United States and Texas v. Aetna, Inc., and Prudential Ins. Co. of Am. (3-99CV1398-H)

One-Count Complaint, alleging a violation of § 7 of the Clayton Act, filed in the United States District Court for the Northern District of Texas, on June 22, 1999. The Justice Department filed suit to stop defendants — Aetna, Inc. ("Aetna"), a worldwide provider of health, retirement, and financial services benefits, and The Prudential Insurance Company ("Prudential"), one of the world's largest financial institutions — from proceeding with Aetna's proposed acquisition of Prudential's health care business. The Department alleged the acquisition would have made Aetna the dominant provider of health maintenance organization ("HMO") and HMO-based point of service plans in Houston and Dallas-Fort Worth, Texas, with 63% and 42%, respectively, of the enrollees in those areas. The Department further alleged that the combination of Aetna, NYLCare (previously acquired by Aetna in 1998), and Prudential would provide Aetna such a large share of the business of physicians in those areas that Aetna would be able to depress those physicians' reimbursement rates. The likely result, the Department alleged, would be increased prices for HMO and HMO-based point of service plans and depressed reimbursement rates for physicians leading to a reduction in quantity or degradation in quality of physicians services. The parties entered into a settlement agreement that would permit the acquisition to go forward provided Aetna sells its NYLCare HMO businesses in Houston and Dallas-Forth Worth. Entry of the Final Judgment is pending subject to completion of the procedures required by the Tunney Act.

United States v. Federation of Certified Surgeons and Specialists, et al. (99-167-CIV-T-17F)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Middle District of Florida, on January 25, 1999. The Justice Department filed suit to prohibit defendants — Federation of Certified Surgeons and Specialists, Inc. ("FCSSI"), a corporation formed by 29 independent general and vascular surgeons in the Tampa, Florida, area, who made up the vast majority of the general and vascular surgeons with operating privileges at five Tampa area hospitals and performed 87 percent of the general and vascular surgeries at those hospitals, to obtain higher fees from managed care plans; and Pershing,

Yoakley, and Associates, P.C. ("PYA"), an accounting and consulting firm that represented FCSSI physicians in negotiations with managed care plans — from continuing their conspiracy to negotiate jointly with various managed care plans to obtain higher fees for the services of FCSSI's 29 otherwise competing surgeons. The Department alleged that PYA informed health plans that FCSSI surgeons would terminate their contracts and refuse to participate in the plans' networks unless the plans contracted with all FCSSI surgeons at higher rates. The Department further alleged that in at least one instance, 28 FCSSI surgeons terminated their existing contracts with a health plan before the plan capitulated to PYA's demands. The Department also alleged that as a result of FCSSI's and PYA's concerted actions, FCSSI surgeons had increased their projected annual revenue by an average of $14,097 for each surgeon. The Department further alleged that the joint activities had unreasonably restrained price and other competition among FCSSI surgeons, resulted in higher prices for general and vascular surgeries, and deprived consumers of health care services of the benefits of free and open competition among general and vascular surgeons, in the purchase of their services in the Tampa area. The parties entered into a settlement agreement whereby FCSSI and PYA were enjoined from continuing to engage in any joint negotiations on behalf of FCSSI surgeons and from engaging in various other anticompetitive activities. The Final Judgment was entered on May 31, 1999 (1999-_ Trade Cas. (CCH) ¶ __,___.)

United States v. Dentsply Int'l, Inc. (99-005, 1/5/99)

Two-count Complaint, one count alleging a violation of § 2 of the Sherman Act and one count alleging a violation of § 1 of the Sherman Act and § 3 of the Clayton Act, filed in the United States District Court for the District of Delaware, on January 5, 1999. The Justice Department filed suit to stop defendant — Dentsply International, Inc., a corporation which provides 70% to 80% of the prefabricated artificial teeth used in the United States — from enforcing unlawful restrictive dealing agreements and engaging in other unlawful conduct designed to restrict most of the tooth distributors in the United States from selling products made by Dentsply's competitors. The Department alleged that Dentsply's actions have both deprived its competitors of the opportunity to distribute their products efficiently and deterred potential new entrants from the market for prefabricated artificial teeth. With its Complaint, the Department filed a motion to dismiss Dentsply's motion for a declaratory judgment, arguing it was barred by the doctrine of sovereign immunity. On January 20, 1999, Dentsply withdrew its motion and filed its answer to the Department's Complaint. No trial date has been scheduled.

United States v. Medical Mutual of Ohio (1:98-CV-2172, 9/23/98)

One-count Complaint alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Northern District of Ohio, on September 23, 1998. The Justice Department filed suit to prohibit defendant — Medical Mutual of Ohio ("MMO"), formerly known as Blue Cross & Blue Shield of Ohio, Ohio's largest health care insurer — from using most favored nations clauses ("MFNs") in its contracts with hospitals in the Cleveland, Ohio,

area. The Department alleged that the MFNs required hospitals to charge MMO's competitors 15% to 30% more for services than the hospitals charged MMO. The Complaint further alleged that the contract clauses had the effect of increasing the prices of hospital services and health insurance to consumers and suppressing innovation in the local health insurance industry. The parties entered into a settlement agreement whereby MMO was enjoined from using MFNs or any practice or contract provision having the same purpose or effect. The Final Judgment was entered on January 29, 1999 (1999-1 Trade Cas. (CCH) ¶ 72,465).

United States v. Federation of Physicians and Dentists, Inc. (98-495, 8/12/98)

One-count Complaint alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Delaware, on August 12, 1998. The Justice Department filed suit to prohibit defendant — Federation of Physicians and Dentists, Inc. ("the Federation"), whose members included nearly all of the independent orthopædic surgeons in Delaware — from continuing its conspiracy with its member physicians to negotiate jointly with various managed care plans to obtain higher fees for the Federation's otherwise competing orthopædic surgeons. The Complaint alleges that the Federation's representatives and its member orthopædic surgeons reached an understanding that the members would negotiate only through the Federation, to resist the efforts of Blue Cross and Blue Shield of Delaware ("BC/BS") to reduce the fees it paid orthopædic surgeons in Delaware to the level of fees it paid to other medical specialists in Delaware. The Complaint further alleges that, pursuant to that understanding, nearly all of the members of the Federation rejected a fee proposal offered by BC/BS and terminated their individual provider services contracts with BC/BS. Trial has been set for April 2000.

United States v. Long Island Jewish Medical Ctr. (CV-97-3412 (ADS) (ETB), 6/11/97)

One-count Complaint, alleging a violation of §1 of the Sherman Act and a violation of § 7 of the Clayton Act, filed in the United States District Court for the Eastern District of New York, on June 11, 1997. The Justice Department alleged that the proposed combination of defendants — Long Island Jewish Medical Center, a large not-for-profit academic hospital, and North Shore Health System, Inc., a not-for-profit corporation that owns and manages North Shore University Hospital, also a large academic hospital — would likely lead to higher hospital prices for health care consumers in the Long Island, New York, area. The Department further alleged that the merging hospitals compete head to head to be the "flagship" or "anchor" hospital in the networks of hospitals that managed care companies assemble on Long Island. After a trial on the merits, the District Court granted judgment in favor of the defendants and dismissed the Complaint on October 23, 1997 (1997-2 Trade Cas. (CCH) ¶ 71,960).

United States v. Association of Family Practice Residency Directors (96-0575-CV-W-2, 5/28/96)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Western District of Missouri, Western Division, on May 28, 1996. The Justice Department filed suit to stop defendant — Association of Family Practice Residency Directors ("AFPRD"), a not-for-profit corporation whose members are Family Practice Residency Directors composing about 95% of all FPRDs in the U.S. — from continuing to use guidelines it had promulgated to restrict competition among its members. The Department alleged that the published guidelines, and steps AFPRD took to ensure compliance with the guidelines, prohibited family practice residency programs at different hospitals from offering individualized economic inducements to senior medical students and family practice residents, and prohibited the use of certain other competitive recruiting practices. The Department further alleged that adherence to the guidelines restrained price and other forms of competition to recruit and employ senior medical students and current family practice residents, and that it deprived senior medical students and current family practice residents of the benefits of competition in recruiting and purchasing their services. The parties entered into a settlement agreement whereby AFPRD was enjoined from engaging in various types of anticompetitive conduct that impede competition in recruiting family practice residents. The Final Judgment was entered on August 15, 1996 (1996-2 Trade Cas. (CCH) ¶ 71,533).

United States v. Woman's Hosp. Found., et al. (96-389-BM2, 4/23/96)

Three-count Complaint, one count alleging a violation of § 1 and two counts alleging violations of § 2 of the Sherman Act, filed in the United States District Court for the Middle District of Louisiana, on April 23, 1996. The Justice Department filed suit to stop defendants — Woman's Hospital Foundation, which owns and operates Woman's Hospital; and Woman's Physician Health Organization, a not-for-profit corporation whose participants include Woman's Hospital and nearly every physician on Woman's Hospital's staff, including approximately 90% of the specialists in obstetrics and gynecology ("OB/GYNs") in the Baton Rouge, Louisiana, area — and unnamed co-conspirators from preventing competition among area hospitals for inpatient OB/GYN services, and dictating higher prices for OB/GYN services. The Department alleged that, as a result, costs for OB/GYN care in the area were higher than they would have been, absent defendants' anticompetitive activities. The parties entered into a consent decree whereby the defendants were enjoined from negotiating on behalf of competing physicians and from engaging in various other anticompetitive activities. The Final Judgment was entered on September 11, 1996 (1996-2 Trade Cas. (CCH) ¶ 71,561).

United States v. Delta Dental of R.I. (CA-96-113, 2/29/96)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Rhode Island, on February 29, 1996. The Justice

Department filed suit to stop defendant — Delta Dental of Rhode Island ("Delta"), a not-for-profit corporation which underwrites and administers group dental care insurance plans for employers and other group purchasers in Rhode Island and elsewhere, including about 35% to 45% of persons covered by dental insurance in Rhode Island, and which contracts with approximately 90% of the practicing dentists in Rhode Island — and unnamed co-conspirators from engaging in unlawful agreements that discourage dentists from offering to patients covered by other insurance companies and to uninsured patients fees lower than those paid by Delta patients. The Department alleged that Delta entered into agreements with its participating dentists which contained most favored nation clauses ("MFNs"). The MFNs allowed Delta to reduce its payments to any participating dentist who agreed to charge fees to a competing plan or individual that were less than the fees agreed to between Delta and the dentist, to the same lower level. The Department further alleged that the MFNs reduced competition in the dental services and dental insurance markets in Rhode Island because they inhibited participating dentists from lowering their fees to other competing plans as well as uninsured patients, beyond the fees set by the defendant. Delta filed a Motion to Dismiss the case which U.S. District Court Judge Pettine denied on October 2, 1996, adopting U.S. Magistrate Judge Robert W. Lovegreen's recommendation of July 12, 1996, that the motion to dismiss be denied (943 F. Supp. 172 (D.R.I. 1996) (Order and Memorandum which contains both the Magistrate's Report and Recommendation, and the District Court Judge's denial of Delta's Motion to Dismiss the case)). Prior to going to trial, the parties entered into a settlement agreement whereby the defendants would be forced to remove the MFNs in its agreements with its participating dentists and would be enjoined from engaging in other actions that would limit future discounting by its participating dentists. The Final Judgment was entered on July 2, 1997 (1997-2 Trade Cas. (CCH) ¶ 71,860).

United States v. Healthcare Partners Inc., et al. (395-CV-01946RNC, 9/13/95)

Two-count Complaint, one count alleging a violation of §1 and one count alleging a violation of §2 of the Sherman Act, filed in the United States District Court for the District of Connecticut, on September 13, 1995. The Justice Department, in conjunction with the Connecticut Attorney General's Office, filed suit to stop defendants — Danbury Health Systems, Inc., a not-for-profit corporation which offers acute inpatient care, outpatient surgical care, and other medical services in the Danbury, Connecticut, area at its monopoly acute care facility, Danbury Hospital; Danbury Area IPA, Inc. ("DAIPA"), a not-for-profit corporation composed of over 98% of the physicians on Danbury Hospital's staff; and Healthcare Partners, Inc. ("Healthcare Partners"), a not-for-profit corporation which is owned by Danbury Hospital and DAIPA, and jointly represents Danbury Hospital and all the physician members of DAIPA — from conspiring to keep out lower-priced managed health care plans. The Department alleged that Danbury Hospital had joined with nearly every local physician to dictate higher-priced terms and conditions to managed care health plans in its geographic area. The parties entered into a settlement agreement whereby the defendants were enjoined from collective bargaining on behalf of competing physicians, except under limited circumstances, and from engaging in various other anticompetitive activities. Danbury Hospital was further enjoined from abusing its control over

staff privileges for anticompetitive purposes. The Final Judgment was entered on February 15, 1996 (1996-1 Trade Cas. (CCH) ¶ 71,337).

United States v. Health Choice of Northwest Mo., Inc., et al. (95-6171-CV-SJ-6, 9/13/95)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Western District of Missouri, on September 13, 1995. The Justice Department filed suit to stop defendants — St. Joseph Physicians, Inc. ("SJPI"), a corporation composed of approximately 85% of the physicians working or residing in Buchanan County, Missouri ("Buchanan County"); Heartland Health System, Inc. ("Heartland"), a not-for-profit corporation which operates the only acute care hospital in Buchanan County and, through subsidiaries and affiliates, operates in a number of other sectors of the health care industry in Buchanan County; and Health Choice of Northwest Missouri, Inc., a corporation owned jointly by SJPI and Heartland which provides managed care services to individuals in Buchanan County — from conspiring to keep out lower-priced managed health care plans. The Department alleged that Heartland had joined with nearly every local physician to dictate higher-priced terms and conditions to managed care health plans in its geographic area. The parties entered into a settlement agreement whereby the defendants were enjoined from negotiating collectively on behalf of competing physicians, except under limited circumstances. Heartland was further enjoined from acquiring additional primary care physicians and other physicians, except under certain circumstances, without first obtaining permission from the Antitrust Division. The Final Judgment was entered on October 22, 1996 (1996-2 Trade Cas. (CCH) ¶ 71,605).

United States v. Oregon Dental Serv. (C95-1211 FMS, 4/10/95)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Northern District of California, on April 10, 1995. The Justice Department filed suit to stop defendant — Oregon Dental Service ("ODS"), a not-for-profit corporation composed of dentists who provide dental coverage to employees of Oregon corporations and others, and whose membership at times included over 90% of the dentists in Oregon — from enforcing most favored nation clauses ("MFNs") in its contracts with member dentists. The Department alleged that the MFNs had resulted in keeping most of the member dentists from discounting their fees to other patients not covered by ODS. The Department further alleged that ODS's agreements with its member dentists caused significant numbers of dentists to drop out of or refuse to join competing dental plans, and that this had the effect of restraining price competition in the provision of dental services and dental insurance in the geographic area, and had resulted in stabilizing prices for dental services and dental insurance at levels higher than they might otherwise have been. The parties entered into a settlement agreement whereby ODS was enjoined from continuing to use MFNs in its contracts with its member dentists and from engaging in various other anticompetitive activities. The Final Judgment was entered on July 14, 1995 (1995-2 Trade Cas. (CCH) ¶ 71,062).

United States v. Vision Serv. Plan (1:94CV02693TPJ, 12/15/94)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Columbia, on December 15, 1994. The Justice Department filed suit to stop defendant — Vision Service Plan ("VSP"), a corporation which is the largest national vision care insurer, whose member optometrists provide vision care to patients in about 42 states and the District of Columbia — from enforcing most favored nation clauses ("MFNs") in its contracts with its member optometrists. The Department alleged that the MFNs had resulted in restricting the willingness of VSP's members to provide discounted fees for vision care services to non-VSP patients, and that this resulted in prices for vision care services and vision care insurance being higher than they might otherwise have been. The parties entered into a settlement agreement whereby VSP was enjoined from continuing to use MFNs in its contracts with member optometrists, and from engaging in various other anticompetitive activities. The Revised Final Judgment was entered on April 12, 1996 (1996-1 Trade Cas. (CCH) ¶ 71,404).

United States v. Classic Care Network, Inc., et al. (94-5566, 12/5/94)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Eastern District of New York, on December 5, 1994. The Justice Department filed suit to stop defendants — Classic Care Network, Inc. ("Classic Care"), a not-for-profit corporation established by eight member hospitals; and those eight named hospitals — from continuing their conspiracy to coordinate contracting with health maintenance organizations and other managed care payers in order to prevent discounting of both inpatient and outpatient hospital services rates. The Department alleged that the conspiracy had the purpose and effect of the eight hospitals' agreeing to refrain from contracting on per diem terms with managed care payers, to refrain from accepting any discounting off inpatient rates, to accept no more that 10% off outpatient rates, and to agree jointly on the terms and conditions of most favored nation clauses that could be negotiated with third-party payers. The Department further alleged that all these actions had unreasonably restrained price competition for both inpatient and outpatient hospital services in the Nassau and Suffolk Counties, New York, area. The parties entered into a settlement agreement whereby Classic Care and the eight hospitals were enjoined from engaging in any joint or collective activities to set fees for hospital services. The Final Judgment was entered on May 1, 1995 (1995-1 Trade Cas. (CCH) ¶ 70,997).

United States and Arizona v. Delta Dental Plan of Ariz., Inc. (94-1793 PHXPGR, 8/30/1994)

Two-count Complaint, one count alleging a violation of § 1 of the Sherman Act and one count alleging a violation of § 44-1402 of the Uniform Arizona Antitrust Act (same offense), filed in the United States District Court for the District of Arizona, on August 8, 1994. The Justice Department, in conjunction with the Arizona Attorney General's Office, filed suit to stop defendant — Delta Dental Plan of Arizona, Inc. ("Delta"), a not-for-profit corporation whose

participating providers comprise dentists licensed to practice in Arizona — from enforcing its most favored nation clauses ("MFNs") in its contracts with its member dentists, who compose about 85% of the dentists in Arizona. The Department alleged that the MFNs in Delta's agreements with its dentists resulted in the restraining or the elimination of discounting of fees for dental services to competing dental plans and other consumers of dental services in the geographic area. The parties entered into a settlement agreement whereby Delta was enjoined from continuing to enforce the MFNs it had in its contracts with all its member dentists and from engaging in various other anticompetitive activities. The Final Judgment was entered on May 19, 1995 (1995-1 Trade Cas. (CCH) ¶ 71,048).

United States v. Mercy Health Servs. and Finley Tri-States Health Group, Inc. (C94-1023, 6/10/94)

One-count Complaint, alleging a violation of §1 of the Sherman Act and a violation of § 7 of the Clayton Act (same offense), filed in the United States District Court for the Northern District of Iowa, Eastern Division, on June 10, 1994. The Justice Department filed suit to stop the creation of a hospital monopoly in the Dubuque, Iowa, area ("Dubuque area"). The Department alleged that the combination of the two defendants — Mercy Health Services ("Mercy") and Finley Tri-States Health Group, Inc. ("Finley"), the only two corporations which provide general acute inpatient care to health care consumers in the Dubuque area — would eliminate competition and result in higher prices and lower quality for hospital services for health care consumers in the Dubuque area. The District Court decided against the Government at trial on October 27, 1995 (902 F. Supp. 928 (N.D. Iowa 1995)). The case was appealed to the 8th Circuit Court of Appeals. On February 26, 1997, the Circuit Court ruled that since Finley had announced on January 15, 1997, that it had abandoned its proposed merger with Mercy, the case was moot. Consequently, the Circuit Court vacated the District Court's decision and remanded with directions to dismiss the case as moot. (The Court of Appeals opinion can be found at 107 F.3d 632 (8th Cir. 1997).)

United States and Florida v. Morton Plant Health Sys., Inc., et al. (94-748-CIV-T-23E, 5/5/94)

One-count Complaint, alleging a violation of § 7 of the Clayton Act, filed in the United States District Court for the Middle District of Florida, Tampa Division, on May 5, 1994. The Justice Department, in conjunction with the Florida Attorney General's Office, filed suit to stop defendants — Morton Plant Health Systems, Inc. ("MPHS"), a not-for-profit-corporation which owns and operates Morton Plant Hospital in Clearwater, Florida; and the Trustees of Mease Hospital, Inc. ("Mease"), a not-for-profit corporation which owns and operates the Mease hospitals in Dunnedin and Safety Harbor, Florida — from consummating their proposed merger. The Department alleged that unless the proposed merger were stopped, it would likely lessen competition substantially in the provision of acute care hospital services and result in higher prices for acute inpatient hospital services because the merged entity would control nearly 60% of all

general acute care hospital beds in North Pinellas County, Florida. The Department entered into a settlement agreement with MPHS and Mease whereby the merger of the hospitals was barred, but the hospitals were permitted to produce certain health care services jointly, provided they market those services independently. In addition, certain other outpatient, administrative, and tertiary services, where competition is plentiful, may be sold jointly by the hospitals. The agreement also permits the hospitals to share some administrative costs. The Final Judgment was entered on September 29, 1994 (1994-2 Trade Cas. (CCH) ¶ 70,759).

United States v. Utah Soc'y for Healthcare Human Resources Admin., et al. (94C282G, 3/14/94)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Utah, Central Division, on March 14, 1994. The Justice Department filed suit to stop defendants — Utah Society for Healthcare Human Resources Administration ("USHHRA"), a professional association of hospital human resource directors in Utah; and nine named hospitals in the Salt Lake County, Utah, area, all of whose human resource directors belong to USHHRA — from continuing their conspiracy to exchange non-public prospective and current information about overall budgets, nursing budgets, and entry level wages for registered nurses. The Department alleged that the information exchange had the purpose and effect of stabilizing entry level wages for registered nurses and limited the amount and frequency of increases in both entry level wages for registered nurses and wages paid to registered nurses at all levels of experience. The parties entered into a settlement agreement whereby the defendants were enjoined from engaging in various anticompetitive activities designed to fix the salaries of nurses employed at hospitals throughout the State of Utah. The Final Judgment was entered on September 14, 1994 (1994-2 Trade Cas. (CCH) ¶ 70,795).

United States v. Greater Bridgeport Individual Practice Ass'n, Inc. (592CV00575 EBB, 9/30/92)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Connecticut, on September 30, 1992. The Justice Department filed suit to stop defendant — Greater Bridgeport Individual Practice Association, Inc. ("GPIPA"), a not-for-profit corporation whose approximately 670 member physicians composed 85% to 95% of the physicians practicing in the greater Bridgeport, Connecticut, area ("Bridgeport area") — and unnamed persons from conspiring to prevent GPIPA's physician members from contracting individually with Physicians Health Services of Connecticut, Inc. ("PHS"), a health maintenance organization which purchases for and provides to its approximately 82,00 members in the greater Bridgeport area comprehensive health care services. The Department alleged that, in part, the purpose of the conspiracy was to increase the capitation fees paid by PHS to GPIPA for its physicians' services, and that it unreasonably restrained price competition among GPIPA's member physicians for the sale of their services to PHS. The parties entered into a settlement agreement whereby GPIPA was enjoined from engaging in any type of

collective contract negotiating on behalf of its member physicians. The Final Judgment was entered on January 7, 1993 (1993-2 Trade Cas. (CCH) ¶ 70,389).

United States v. Hospital Ass'n of Greater Des Moines, Inc., et al. (4-92-70648, 9/22/92)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Southern District of Iowa, Central Division, on September 22, 1992. The Justice Department brought suit to stop the defendants — five named hospitals in Des Moines, Iowa; and the Hospital Association of Greater Des Moines ("HAGDM"), a not-for-profit trade association of the five hospitals — from conspiring to limit the types and amount of advertising in which each defendant hospital engages. The Department alleged that the conspiracy diminished price and quality competition among the defendant hospitals for patients, physician referrals, and third-party contracts. The parties entered into a settlement agreement whereby HAGDM and the five hospitals were enjoined from entering into any agreement between themselves concerning the types of or amounts they spent on advertising in the Des Moines, Iowa, area. The Final Judgment was entered on March 5, 1993 (1993-1 Trade Cas. (CCH) ¶ 70,160).

United States v. Massachusetts Allergy Soc'y, Inc., et al. (92-10273-H, 2/3/92)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Massachusetts, on February 3, 1992. The Justice Department filed suit to stop defendants — the Massachusetts Allergy Society, Inc. ("MAS"), a not-for-profit corporation composed of most of the allergists practicing in Massachusetts; Wilfred N. Beaucher, M.D., then-President-Elect of MAS and MAS's official representative to negotiate fees with health maintenance organizations ("HMOs"); Jack E. Farnham, M.D., former Secretary-Treasurer of MAS and former President of MAS; Bernard A. Berman, M.D., a founder of MAS; and Irving W. Ballit, M.D., former President of MAS — and unnamed co-conspirators from conspiring to fix and raise the fees paid for allergy services by certain HMOs in Massachusetts. The Department alleged that the defendants and unnamed co-conspirators agreed to have MAS act as their joint negotiating agent to obtain higher fees from certain HMOs for allergy services, resisted competitive pressure to discount fees, and developed and adopted a fee schedule to be used by defendant MAS in negotiating higher fees with certain HMOs on behalf of MAS's member allergists. The parties entered into a settlement agreement which enjoined MAS from collectively negotiating fees on behalf of its member dentists. The Final Judgment was entered on May 18, 1992 (1992-1 Trade Cas. (CCH) ¶ 69,846).

United States v. Carson B. Burgstiner, et al. (CV491-044, 2/7/91)

One-count Complaint, alleging a violation of § 1 of the Sherman Act, filed in the United States District Court for the Southern District of Georgia, Savannah Division, on February 7, 1991. The Justice Department filed suit to stop defendants — 22 named competing

obstetricians/gynecologists ("OB/GYNs") in the Savannah, Georgia, area ("Savannah area") — from conspiring to exchange fee information. The Department alleged that the fee information exchange resulted in higher fees for OB/GYN services in the Savannah area. The parties entered into a settlement agreement whereby the defendants were enjoined from engaging in various anticompetitive activities whose purpose or effect would be to fix the prices for OB/GYN services in the Savannah area. The Final Judgment was entered on April 29, 1991 (1991-1 Trade Cas. (CCH) ¶69,422).

United States v. Procter & Gamble Co., et al. (90-5144, 8/7/90)

One-count Complaint, alleging a violation of §7 of the Clayton Act, filed in the United States District Court for the Eastern District of Pennsylvania, on August 7, 1990. The Justice Department filed suit to stop defendants — The Procter & Gamble Co. ("P&G"), a corporation which produces and sells the over-the-counter ("OTC") stomach remedy Pepto Bismol; and Rhone-Poulenc Rorer, Inc. ("Rorer"), a multinational corporation which produces and sells the OTC Maalox line of stomach remedies — from consummating an agreement in which P&G would acquire the exclusive right to market and distribute, and an option to purchase the assets used to manufacture, the OTC Maalox line of stomach remedies from Rorer. The Department alleged that, if consummated, the transaction would eliminate competition in the U.S. between P&G and Rorer, as well as lessen competition substantially in the U. S. in the OTC stomach remedies market. P&G and Rorer announced on August 23, 1990, their intention to terminate their proposal that P&G acquire the rights to Rorer's Maalox line of OTC stomach remedies. On August 27, 1990, the parties agreed to, and submitted to the court, a Stipulation of Voluntary Dismissal.

United States v. Rockford Memorial Corp., et al. (88C-20186, 6/1/88)

One-count Complaint, alleging a violation of § 1 of the Sherman Act and a violation of § 7 of the Clayton Act (same offense), filed in the United States District Court for the Northern District of Illinois, Western Division, on June 1, 1988. The Justice Department filed suit to stop defendants — Rockford Memorial Corporation ("Rockford Memorial"), a not-for-profit corporation which owns and operates a general acute care hospital in Rockford, Illinois; and SwedishAmerican Corporation ("SwedishAmerican"), a not-for-profit corporation which also owns and operates a general acute care hospital in Rockford, Illinois — from consummating a proposed merger. The Department alleged that the merger of the two largest of the only three hospitals in the Rockford, Illinois, area would substantially lessen competition in that geographic market for the provision of acute inpatient hospital services. The Court held in favor of the Government on February 23, 1989 (717 F. Supp. 1251, (N.D. Ill. 1989)). On appeal, Judge Posner of the 7th Circuit Court of Appeals affirmed the lower court's decision (898 F.2d 1278 (7th Cir.), cert. denied, 498 U.S. 920 (1990)).

United States v. Carilion Health Sys., et al. (88-0249-R, 5/27/88)

One-count Complaint, alleging a violation of § 1 of the Sherman Act and a violation of § 7 of the Clayton Act (same offense), filed in the United States District Court for the Western District of Virginia, Roanoke Division, on May 27, 1988. The Justice Department filed suit to stop defendants — Carilion Health System, a not-for-profit corporation which owns and operates Roanoke Memorial Hospitals; and Community Hospital of Roanoke Valley, a not-for-profit corporation which owns and operates Community Hospital of Roanoke Valley — from consummating a proposed merger of the largest and third largest hospitals of three total general acute care hospitals in the Roanoke, Virginia, area ("Roanoke area"). The Department alleged that the merger would substantially lessen competition in the market for the provision of acute inpatient hospital services in the Roanoke area. The Court held against the Government on November 29, 1989 (707 F. Supp. 840 (W.D.Va. 1989)). On appeal, the 4th Circuit Court of Appeals affirmed the lower court's decision in an unpublished disposition (892 F.2d 1042 (4th Cir. 1989)). The Government's motion for a rehearing and for a rehearing en banc were denied on February 6, 1990. Id.

United States v. Baxter Travenol Labs., Inc., et al. (85 C 09856, 11/22/85)

One-count Complaint, alleging a violation of § 7 of the Clayton Act, filed in the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1985. The Justice Department filed suit to stop defendants — Baxter Travenol Laboratories, Inc. ("Baxter"), a corporation which develops, manufactures, and sells various medical care products and services throughout the world; and American Hospital Supply Corporation ("AHS"), a corporation which also develops, manufactures, and sells various medical care products throughout the world — from consummating a proposed transaction whereby Baxter would acquire AHS. The Department alleged that, if consummated, the acquisition would lessen competition substantially in the U.S. for the manufacture and sale of parenteral solutions, fluid administration sets, electronic flow control devices, therapeutic hemapheresis equipment, and surgeons and procedures gloves — all products in which Baxter and AHS were competitors. The parties entered into a settlement agreement whereby both Baxter and AHS would divest themselves of certain assets to ensure that the acquisition did not produce any anticompetitive effects in any relevant product or geographic market. The Final Judgment was entered on April 15, 1986 (1986-1 Trade Cas. (CCH) ¶ 67,068).

United States v. Beverly Enters., et al. (84-70-1-MAC, 1/18/84)

One-count Complaint, alleging a violation of § 7 of the Clayton Act, filed in the United States District Court for the Middle District of Georgia, in Macon, Georgia, on January 18, 1984. The Justice Department filed suit to stop defendants — Beverly Enterprises, Inc. ("Beverly"), then the largest provider of nursing home care in the U. S.; Southern Medical Services, Inc.

("SMS"), which was the 17th largest provider of nursing home care in the U.S. and operated 49 nursing homes in seven states; Beverly Enterprises — Alabama, Inc. ("Beverly — Alabama"), a wholly-owned subsidiary of Beverly; American Trust of Hawaii, Inc. ("American Trust"), Trustee under the SMS Profit Sharing Plan and owner of both voting and non-voting stock of SMS; George H. Smith ("Smith"), President of SMS and shareholder of both voting and non-voting stock of SMS; and Jack K. Bruce ("Bruce"), Corporate Secretary of SMS and owner of both voting and non-voting stock of SMS — from consummating the proposed acquisition whereby Beverly would acquire all the capital stock of SMS. The Department alleged that the acquisition would lessen competition substantially in the market for the provision of nursing home care in and around the cities of Macon, Georgia; Augusta, Georgia; Montgomery, Alabama; and Mobile, Alabama. The parties entered into a settlement agreement whereby the acquisition was permitted to be consummated, provided Beverly Enterprises divested itself of certain nursing homes in geographic markets where it already had nursing homes. The Department had determined that Beverly's acquisition of more nursing homes in certain geographic areas in Alabama and Georgia, where Beverly already had a significant presence, would result in Beverly's having too high a concentration of nursing homes in those areas. On March 1, 1984, the Complaint was dismissed as to defendants SMS, American Trust, Smith, and Bruce. The Final Judgment as to the two remaining defendants, Beverly and Beverly — Alabama, was entered on June 7, 1984 (1984-1 Trade Cas. (CCH) ¶ 66,052).

In re Stanislaus Preferred Provider Organization, Inc. (10/12/83)

On October 12, 1983, the Justice Department announced publicly that it had advised legal counsel for the Stanislaus Preferred Provider Organization, Inc. ("SPPO") that it was prepared to file a civil antitrust suit in the United States District Court in the Eastern District of California, Fresno, California, alleging that the formation and operation of SPPO constituted an unlawful conspiracy in restraint of trade, in violation of §1 of the Sherman Act. Counsel for SPPO subsequently informed the Department that SPPO's Board of Directors had already started to dissolve SPPO and would complete its dissolution as expeditiously as possible. SPPO was controlled by approximately 230 physicians practicing in and around Stanislaus County, California. The Department alleged that SPPO required its members to agree not to contract with any other managed care plan not affiliated with or sponsored by SPPO, and that SPPO had enrolled as physician members approximately 50% of the physicians practicing in or around Modesto, California, and approximately 90% of the physicians practicing in or around Turlock, California. The Complaint would have alleged that the formation and operation of SPPO restrained competition in the delivery of health care services in both the Modesto, California, and the Turlock, California, areas. Because SPPO notified the Department of its plans to dissolve SPPO quickly and completely, no Complaint was filed.

United States v. North Dakota Hosp. Ass'n, et al. (A2-83-131, 8/25/83)

One-count Complaint, alleging a violation of § 1 of the Sherman Act and a violation of § 4A of the Clayton Act (same offense), in the United States District Court for the District of North Dakota, Northeastern Division, on August 25, 1983. The Justice Department filed suit to stop defendants — the North Dakota Hospital Association ("NDHA"), a trade organization for the hospitals and nursing home industries in North Dakota; and 14 named operators of hospitals in North Dakota (out of approximately 54 of NDHA's member hospitals in North Dakota) — and unnamed co-conspirators from conspiring not to contract individually with the Indian Health Service ("IHS"), an agency of the U.S., at potentially lower rates than the hospitals' usual private rates. The Department alleged that defendants and unnamed co-conspirators had conspired to discourage hospitals in North Dakota from signing contracts proposed by IHS, to reject IHS's proposed contracts unless they included provisions maintaining the level of charges billed to IHS at rates equal to the hospitals' usual private rates, and to refuse to accept contracts proposed by IHS. The Department further alleged that, as a result, charges to IHS for medical and surgical services were fixed, maintained, and established at noncompetitive levels; competition in North Dakota for the sale to IHS of medical and surgical services was restrained, suppressed, and eliminated; and the U.S., through its agency, IHS, had been denied the benefits of free and open competition in North Dakota for the purchase of medical and surgical services for IHS's members, i.e., Native American. The Government moved for summary judgment, which was granted, finding the Association liable for violating Section 1 of the Sherman Act. The Government's motion for an injunction, however, was denied because the Court determined that there was no "continuing threat of antitrust violations." The case was decided on July 30, 1986 (640 F. Supp. 1028 (D.N.D. 1986)).

II. CRIMINAL CASES[1]

United States v. Lake Country Optometric Soc'y (W-95-CR-114, 12/15/95)

One-count Information, charging a violation of § 1 of the Sherman Act, filed in the United Stated District Court for the Western District of Texas, Waco Division, on December 15, 1995. The Justice Department filed suit to stop defendant — Lake Country Optometric Society ("Lake Country"), an unincorporated trade association composed of licensed optometrists in central Texas — and unnamed co-conspirators from conspiring to raise, fix, maintain, and stabilize the prices of eye examinations in central Texas. The Department alleged that Lake Country and unnamed co-conspirators agreed to raise the prices to be charged for eye examinations and monitored and enforced compliance with the agreement. On July 9, 1996, Lake Country pled guilty and was fined $75,000.

United States v. Bolar Pharmaceutical Co., Inc., et al. (HAR-92-0454, 12/17/92)

One-count Indictment, charging a violation of § 1 of the Sherman Act, returned in the United States District Court for the District of Maryland, on December 17, 1992. The Justice Department alleged the defendants — Bolar Pharmaceutical Co., Inc. ("Bolar"), a corporation which manufactures and sells generic drug products throughout the U. S.; Vitarine Pharmaceuticals, Inc. ("Vitarine"), a corporation that also manufactures and sells generic drug products throughout the U.S.; Lawrence S. Raisfeld ("Raisfeld"), Secretary-Treasurer of Bolar; and Roger W. Jordan ("Jordan"), President of Vitarine — and unnamed co-conspirators with conspiring to fix the price of generic Dyazide, a medication generally prescribed to treat hypertension or high blood pressure, and to allocate certain customers that purchased generic Dyazide. The Department alleged that this conspiracy eliminated competition in the sale of generic Dyazide sold throughout the U.S. Vitarine pled nolo contendere on September 22, 1993, and was fined $500,000; Bolar and Raisfeld pled nolo contendere on October 20, 1993 — Bolar was fined $1 million and Raisfeld was fined $20,000 and was given one year of probation; and Jordan pled nolo contendere on October 29, 1993, and was fined $20,000, given one year of probation, and was put under house arrest for 120 days.

United States v. Robert Shulman (HAR-92-0446, 12/9/92)

One-count Information, charging a violation of § 1 of the Sherman Act, filed in the United States District Court for the District of Maryland, on December 9, 1992. The Justice Department alleged the defendant — Robert Shulman, former President of Bolar Pharmaceuticals, Inc. ("Bolar") (compare case immediately above) — and unnamed co-conspirators with agreeing on the range of prices at which Bolar and its competitor, Vitarine Pharmaceuticals, Inc., sold generic

[1]Excludes big-rigging cases related to various types of health care products and supplies.

Dyazide, a medication generally prescribed to treat hypertension or high blood pressure, and with allocating certain customers that purchase generic Dyazide. The Department alleged that this conspiracy eliminated competition in the sale of generic Dyazide sold throughout the U.S. Shulman pled guilty on December 18, 1992, and on January 22, 1993, he was fined $20,000, sentenced to 640 days in jail, and given one year of probation.

United States v. Aaron L. ("Lanoy") Alston, et al. (CR 90-042-TUC, 2/7/90)

One-count Indictment, charging a violation of § 1 of the Sherman Act, returned in the United States District Court for the District of Arizona, on February 7, 1990. The Justice Department alleged the defendants — three dentists in Tucson, Arizona, Aaron L. Alston ("Alston"), Ronald D. Walker ("Walker"), and Richard B. Meyer ("Meyer"); and the dental corporations A. Lanoy Alston, D.M.D., P.C., and Desert Valley Dental, Ltd., owned by two of the dentists — and unnamed co-conspirators with conspiring to fix and raise the co-payment fees paid by participants in four prepaid dental plans in the Tucson, Arizona, area. The Department alleged that the conspiracy caused the participants of three of the four prepaid dental plans to pay higher copayment fees to the defendants and unnamed co-conspirators than they might otherwise have had to pay. The case was the first criminal case the Antitrust Division brought against medical practitioners in over 50 years. The case was tried in December, 1990, and the jury found all the defendants guilty on December 17, 1990. However, the District Court granted the motions of two defendants to dismiss their cases and ordered a new trial for the third defendant, Alston (1991-1 Trade Cas. ¶ 69,366 (transcript of post-trial motions discussion and rulings)). On appeal to the Ninth Circuit Court of Appeals, on September 11, 1992, the Court reversed the two orders of dismissal and affirmed the one order for a new trial, and remanded the case to the District Court for retrial of all three defendants. (974 F.2d 1206 (9th Cir.)). On January 15, 1993, the Government reached a settlement with all five parties whereby the charges against the three dentists and one of the two dentists' corporations were voluntarily dismissed, and Alston's dental corporation pled nolo contendere and was fined $5,000, put on probation for 547 days, and required to perform 250 hours of community service. Alston was directed to perform the community service on behalf of his dental corporation.